**UNITED STATES OF AMERICA**
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**
**REGION 2**

**J. ANDREA CARTING**
**EMPLOYER**

**and** **CASE NO. 2-RC-22960**

**INTERNATIONAL UNION OF JOURNEYMEN & ALLIED TRADES, LOCAL 124, R.A.I.S.E.**

**PETITIONER**

## DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a duly designated Hearing Officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record in this proceeding, it is found that:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. Despite being given notice of, and opportunity to attend the hearing, the Employer did not attend the hearing[1]. Petitioner called witnesses at

[1] The record reveals that the Notice of Hearing was served on the Employer by facsimile. The affidavit of service for the Order Rescheduling the Hearing was served by regular and certified mail to the Employer at all known addresses and to its representative at his

the hearing and established that the Employer is in the business of transporting raw garbage and cardboard from commercial grocery stores located in the Bronx and Westchester. It appears from the record that the Employer picks up waste from various grocery or retail stores, including C-Town, Pathmark, the Dollar Store and Bonfare in the Bronx. The record further reveals that the Employer conducts its operations six days each week. On average, the two Employer's trucks which pick up cardboard dump about 20 tons of cardboard every night, for which the Employer receives $43 per ton. The Employer derives gross revenue from this portion of its business in the amount of $860 per night or $268,320 per annum. The record further indicates that this income is derived from entities which are themselves directly involved in interstate commerce.

Further, I take administrative notice that the Region has previously found jurisdiction in cases involving employers in the same industry who use the same transfer stations. Specifically, in *Paper Fibers Corp. and Production and Maintenance Employees Union, Local 116*, Case No. 2-RC-22444 and *Paper Service, Inc. and Production and Maintenance Employees Union, Local 116,* Case No. 2-RC-22445, the parties stipulated and the Region found that these employers were involved in the business of transporting waste. Annually, in the course and conduct of its business operations, the employers purchased and received at their Bronx facility, goods and supplies valued in excess of $50,000 directly from suppliers located outside the State of New York. In the instant case, the Employer uses the same transfer station as the above-named companies.

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known address. At the time the Notice of Hearing was issued, no representative had made an appearance on behalf of the Employer.

Thus, it appears from the record that the Employer has purchased materials and supplies that originated outside the state of New York, which are valued in excess of $5,000. The record establishes and I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. See *Tropicana Products*, 122 NLRB 121, 123 (1959); and *Major League Rodeo, Inc.*, 246 NLRB 743 (1979).

3. The International Union of Journeymen & Allied Trades, Local 124 (Petitioner) represents employees of approximately 50 trucking companies in the Tri-state area in regard to their wages and benefits. Petitioner has entered into collective bargaining agreements with approximately 10 garbage transportation companies in the New York City area establishing the wages, hours of employment and other terms and conditions of employment covering an undisclosed number of employees. The truck drivers attend union meetings, and participate in elections for union officials. Accordingly, the record establishes that the Petitioner is an organization in which employees participate and that exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, hours, rates of pay, hours of employment, and conditions of employment. Thus, I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act. See *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851-852 (1962).

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) of the Act.

5. At the hearing, Petitioner amended its petition and is seeking an election in a unit of all full time and regular part time drivers and helpers/lifters employed by the Employer at and out of the facility located at 1550 Stiller Avenue, Bronx, NY, but excluding all other employees, including office clerical employees, and guards, professional employees and supervisors, as defined by the Act.

Terence Jermin, a former employee, testified that the Employer employs two helpers/lifters and four drivers who pick up waste and bring it to recycling centers six days each week. In addition to the drivers and helpers, the Employer also employs a secretary and two collectors/salesmen, all of whom Petitioner would exclude from the unit. The main job of the collector/salesmen is to collect revenue from the Employer's customers on Mondays, but no further evidence was adduced regarding their job duties.[2] There is no evidence that these employees drive trucks or assist the drivers in performing there duties.

Section 9(b) of the Act states that the "Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, or subdivision thereof."

The Act does not require that a unit for bargaining be the only appropriate unit, the ultimate unit or the most appropriate unit. Rather the Act requires only that the unit be an appropriate unit for the purpose of collective bargaining. The Board has held that in determining whether a petitioned-for unit is appropriate,

[2] Petitioner asserts that the collectors/salesmen are professional employees and that the secretary is exclusively an office clerical employee.

the unit sought by the petitioning union is always a relevant consideration. *Lundy Packing Co.*, 314 NLRB 1042 (1994).

As noted above, the Employer did not appear at the hearing to take a position on whether the petitioned-for classifications set forth an appropriate unit, despite having received notice of a hearing. While no record evidence was adduced to determine whether the collectors/salesmen share a community of interest with the drivers and helper/lifters, nothing in the record would render the proposed unit inappropriate. *Mc-Mor-Han Trucking Co.*, 166 NLRB 700 (1967). Moreover, where employees engaged in selling their employer's products drive vehicles and deliver the products "as an incident" of their sales activity, they are regarded as essentially salesmen with "interests more closely applied to salesmen in general than to truck drivers or to production and maintenance employees or warehouse employees." *Plaza Provision Co.*, 134 NLRB 910 (1962). However, based on the record description of the duties of the two collectors/salesmen, there is no basis for me to conclude that they share a community of interest with the petitioned-for drivers and helpers.

In view of the foregoing, I find that the following constitutes a unit that is appropriate for the purposes of collective bargaining:

| | |
|---|---|
| INCLUDED: | All full time and regular part time drivers and helper/lifters employed by the Employer in the Bronx. |
| EXCLUDED: | All other employees, including collector/salesmen, office clerical employees, and guards, professional employees and supervisors as defined by the Act. |

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time[3] and place set forth in the notice of election[4] to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed at the payroll period ending immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike, who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the

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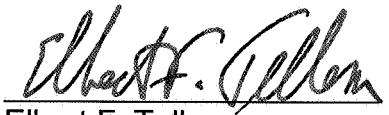
[3] Pursuant to Section 101.21 (d) of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this decision.

[4] The Board has adopted a rule requiring that election notices be posted by an employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(a) of the Board's Rules. In addition, the Board has held that Section 103.20 (c) of the Board's Rules requires that an employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB No. 52 (1995).

election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[5] Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Journeymen & Allied Trades, Local 124, R.A.I.S.E[6].

Dated at New York, New York,
April 29, 2005



Elbert F. Tellem,
Acting Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

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[5] In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which my be used to communicate with them. *North Macon Health Care Facility,* 315 NLRB 359 (1994); *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company,* 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make a list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on **May 6, 2005.** No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

[6] Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by no later than **May 13, 2005**.